



1368 Research Park Dr
Beavercreek, Ohio

BEAVERCREEK BOARD OF ZONING APPEALS
Regular Meeting – February 14, 2018, 6:00 p.m.
Council Chambers

- I. CALL TO ORDER
- II. ROLL CALL
- III. APPROVAL OF AGENDA
- IV. APPROVAL OF MINUTES
A. January 10, 2018
- V. PUBLIC HEARINGS
A. V-18-1, Nicholas & Heather Harvey, 3180 Shakertown Road
- VI. ADJOURNMENT

BEAVERCREEK BOARD OF ZONING APPEALS
REGULAR MEETING, January 10, 2018, 6:00 PM

PRESENT: Mr. Hight, Mr. Hung, Mr. Kruse, Mr. Morter, Mr. Raber

ABSENT: None

Chairman Hung called the meeting to order followed by roll call.

Mr. Hight MOVED approval of the agenda, seconded by Mr. Morter. Motion PASSED by majority voice vote.

Mr. Hight MOVED approval of the July 12, 2017 minutes, seconded by Mr. Morter. Motion PASSED by majority voice vote.

PUBLIC HEARING

CU-18-1, OH Exchange Facilities Networks, LLC

Clerk Gillaugh read the notice of public hearing on an application filed by OH Exchange Facilities Networks, LLC, 120 S. Riverside Plaza, Ste. 1800, Chicago, IL 60660. The applicant is requesting a conditional use approval to construct a new micro tower in the City right-of-way. The property is located on the east side of Commons Boulevard across from 2619 Commons Blvd.

John Bear, Permitting Manager, OH Exchange Facilities Networks, stated the request tonight is for a new pole. He said his preference in working with cities is to figure out a deployment that is beneficial for his company and the City. Mr. Bear explained their first preference is to co-locate onto existing infrastructure. He stated they have received approval for a co-location on an existing AT&T pole located on Edwin Drive. Mr. Bear said their RF Engineers determine where there is a gap in coverage, and over by the mall there is a gap in coverage. He explained that is mostly an underground area, so there was not adequate infrastructure to attach to. Mr. Bear stated Mr. Burkett had requested they reduce the height of the pole down to 40 feet, and said he had a revised set of plans getting the height of the pole down to 37 feet with the antenna being right at 40 feet.

Mr. Burkett summarized the staff report dated January 5, 2018, which stated the applicant was proposing a conditional use approval to allow for the construction of a wireless telecommunication micro tower within the City's right-of-way. He discussed the location of the proposed tower, what currently exist on the surrounding properties, the proposed site plan, and the height requirement. Mr. Burkett discussed the two proposed conditions in the resolution, and recommended approval of the case.

There being no public input, the public hearing was closed.

Mr. Morter asked with this technology if these types of towers are going to replace the 200-foot towers. Mr. Bear said yes and no. He explained the large towers will always be necessary, but there will be more micro towers and less macro towers.

Mr. Hung said one of the conditions required proof of liability before the zoning permit could be issued. Mr. Burkett stated yes. Mr. Hung questioned if the amount of the insurance would be determined when the permit comes in. Mr. Burkett said yes, it would be determined by the City Attorney, the City Engineer, and the City Finance Department. Mr. Hung stated he was used to seeing an amount required, and was assured that is something that will be worked out with the applicant and staff when the time arises.

Mr. Hight said the tower was originally 75 feet tall. Mr. Bear said yes, approximately 12 to 14 months ago it was at 75 feet. Mr. Hight questioned if the reduction in height would require an increase in the number of towers needed. Mr. Bear explained generally speaking, when the height is reduced it will require more candidates, but his pipeline for the City of Beavercreek has gone down and currently there are three. He said two of those will be on existing poles, so this is the only request for a new pole.

Mr. Hight MOVED to approve V-17-3 with two conditions:

1. The conditional use application to allow construction of a small cell wireless telecommunication tower and equipment on Commons Boulevard, across from 2619 Commons Boulevard, Beavercreek Ohio 45431, is hereby approved.
2. Conditions of approval shall be as follows:
 - a. The approved plans for this application shall be those stamped "Received December 6, 2017, except as modified herein.
 - b. The height of the pole shall be limited to 40 feet from adjacent grade.
 - c. The pole shall be painted to match the color of the existing light poles on Commons Boulevard.
 - d. Prior to the installation of the pole and associated equipment, the applicant shall apply for and receive approval of a zoning permit and a right-of-way permit from the Planning and Development Department and the Engineering Department respectively.
 - e. The pole shall not contain any advertisements, and may only display information required by federal and/or state law.
 - f. Should the use of the be discontinued (meaning the structure is not properly maintained, has been abandoned, become obsolete, has been unused or has

ceased daily activities or operation for a period of 12 months) the applicants or its successors shall be responsible for its removal.

- g. Prior to the construction of the pole, the owners/operators of the pole shall submit and keep on file with the City, proof of liability insurance, and shall indemnify the City of all liability from the construction and operation of the pole within the city's right-of-way.
- h. As required by state and federal laws, the applicant is granted relief from non-applicable and non-practical requirements of §158.130 (D) and (F) of the Zoning Code.

Motion was seconded by Mr. Morter, and PASSED by a roll call vote of 5-0.

ADJOURNMENT

Mr. Morter MOVED adjournment at 6:19 p.m., seconded by Mr. Hight. Motion PASSED by majority voice vote.

Melissa Gillaugh
Deputy Clerk

February 6, 2018

**STAFF REPORT
VARIANCE REQUEST
CASE: V 18-1**

I. APPLICANT

Nicholas and Heather Harvey
3180 Shakertown Road
Beavercreek OH 45434

II. NATURE OF REQUEST

The applicants are requesting a variance from §158.105(C) of the City of Beavercreek Zoning Code in order to allow for a 48 inch tall fence to remain within the required front yard in a R-1A , One Family Residential district.

III. FINDINGS

1. The property under discussion is located at 3180 Shakertown Road within Section 8 of the Golden Acres Subdivision.
2. §158.105 (C) of the City of Beavercreek Zoning Code states that no fence, wall, or hedge shall rise over 42 inches in height within any required front yard. In the case where the principal structure falls within the required front yard, fences up to six feet high shall be permitted in the required front yard as long as said fence is no closer to the public right-of-way than the principal structure.
3. The applicant constructed a 48 inch tall fence, without a permit, that encroaches approximately 21 feet into the required front yard.
4. In this specific case, a 48 inch tall fence would be permitted to extend from the back corner of the primary structure, no closer to Jayell Drive than the house. A 42 inch tall fence would be permitted all the way up to all property lines.

IV. DISCUSSION

The property is located on the corner of Jayell Drive and Shakertown Road and has two front yards. The code requires that any fence over 42 inches not extend any closer to any front property line when the house is located within the required front yard as is the case here. The applicants state that they were not made aware by their fence company

that a zoning permit would be required and the Code Enforcement Officer noticed the illegal fence while driving down Shakertown Road. The applicants state in their justification that a 48 inch fence is required because of their dogs. However, the fence at the rear of the property isn't any taller than 30 inches. In order for staff to recommend approval of a variance the applicant must demonstrate that a hardship does not allow them to meet the requirements of the code. Other than the fact that the fence is already in place, there is no reason the applicants could not have constructed a 42 inch fence that meets the code. Staff finds that the variance request from §158.131(F)(1) does not meet the requirements for approval per §158.172 (H)(5)(a) of the City of Beavercreek Zoning Code.

V. RECOMMENDATION:

Staff recommends that the Board of Zoning Appeals find that:

1. The reasons set forth in the application are not valid and do not justify the granting of the requested variance, and
2. The eight items in §158.172 (H)(5)(a) have not been fully satisfied.

Staff further recommends that the Board of Zoning Appeals adopt the attached resolution denying a variance from §158.131 (F)(1)

**RESOLUTION
BOARD OF ZONING APPEALS
CASE NO. V 18-1**

WHEREAS, Nicholas and Heather Harvey have made application for a variance from the strict application of the requirements of the City of Beavercreek Zoning Code for the property located 3180 Shakertown Road; and

WHEREAS, the applicants are requesting permission to allow a 48 inch fence to remain that would encroach into the required front yard setback; and

WHEREAS, a public hearing was held on February 14, 2018 at which time all persons were given opportunity to comment on the application; and

WHEREAS, the Board of Zoning Appeals finds that the reasons set forth in the application are not valid and do not justify the granting of the variance; and

WHEREAS, the Board of Zoning Appeals finds that subparagraphs 1 through 8 of §158.172 (H)(5)(a) have not been fully satisfied.

NOW therefore the Board of Zoning Appeals orders that:

A variance from §158.105 (C) of the City of Beavercreek Zoning Code to allow construction of said fence, that would encroach into the required front yard setback for this property by 21 feet be denied.

ACTION BY BOARD OF ZONING APPEALS

(Date)

Chairman

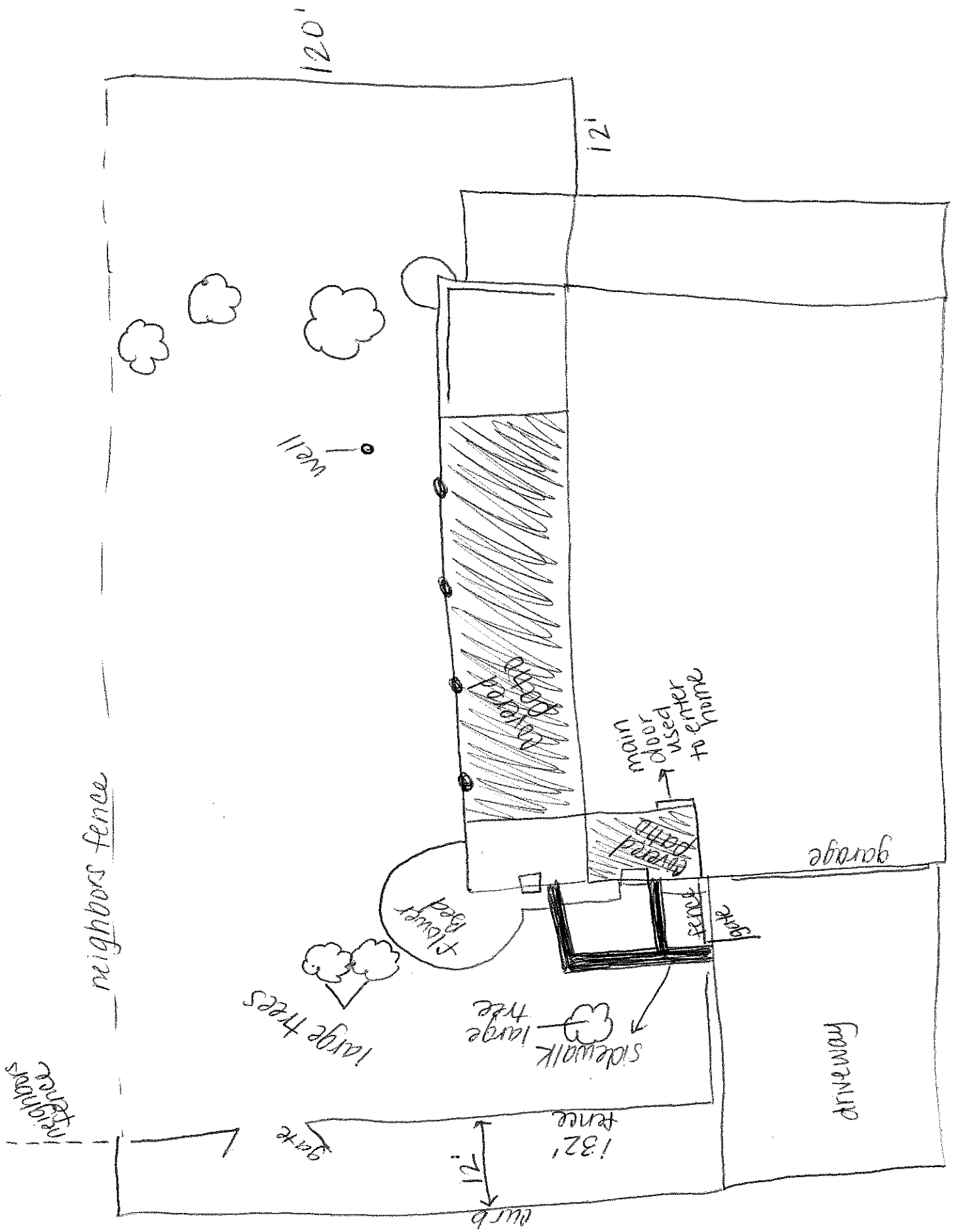
Request for Variance – 3180 Shakertown Rd

We sincerely apologize for not obtaining a permit prior to the construction of our fence. Our contractor misled us and we have taken the necessary steps to follow up with them, including filing a BBB complaint. We have requested compensation for the work that will be necessary based upon the decision made. A permit request has now been filed.

In regards to the current state of our fence, we have listed information below that we feel is valuable in assisting with your decision:

- The fence is NOT in the public right-of-way
- The fence does NOT interfere with the visibility from driveways or intersections
- It is a Kentucky 3-Board fence – which allows for greater visibility from all directions
- It is currently a 48” fence – which according to our contractor is “proper fence height”. They do not consider anything under 48” to be a “fence”.
- Lowering the fence to 42” will endanger our dog as we live on a busy road and it is recommended to have at least a 48” fence for a dog, per veterinary advice. Our preference is not to move the fence, but to keep it in its current position and at its current height. We do not feel that lowering the fence by 6” will greatly impact any part of our neighborhood. Nor will keeping it at its current height negatively impact the neighborhood.
- Where the fence meets our home is atypical in terms of functionality. Extending toward the rear of our property, immediately after the garage, is a covered patio. These details are not available to you via the aerial photos you have access to, so we have included several photos that will better explain our dilemma. One photo in particular has been starred, as it is the best angle of this area. This area is the main entrance to our home. We park on the driveway, go through the fence gate and enter through the door on the patio. Placing the fence in line with our home and extending in towards the rear of our property would have taken away the usage of that side door and compromised the function of the patio area. In addition, we would have had to remove a side walk, large flower bed and 2 very large trees. For this reason, we feel that constructing the fence in this manner would have resulted in undue hardship. The area where a fence typically meets up to a house is an unused, nonfunctional area, i.e. a back corner or area similar to the other side of our home. Because of the unique layout and function of our home, we feel that we do have a case of unusual circumstance. We have future plans for our patio area that would also be severely compromised by the fence not staying in its current location.
- Our neighbors have a fence that has been approved through a variance in 1999
- Since moving in, we have been welcomed by all of our neighbors and they have all commented on how nice the fence looks. We have received no complaints.
- The fence in its current position is directly in line with our neighbors fence





SHAKERTOWN RD

773/HU



EADS Fence Company, Inc.

131 Broadway Street
Loveland, Ohio 45140
(513) 677-4040
Fax (513) 677-4045

8-14-17

Date Sold

WED 5:30

WWW.EADSFENCE.COM

☒ Proposal

☐ Final Contract

Lead # 53128

Customer NICK HARVEY

Date 8-21-17

Billing Address 3180 SHAKER TOWN ROAD

City DAYTON

State OH

Zip 45434

County / Township GREENE

Home Phone

Office Phone

Source

Cell Phone 746-274-0012

Email

Job Location BEAVER CREEK

APP. 209' OF 3-RAIL 1 1/2" BOARD FENCING WITH WIRE
1- 10' DOUBLE GATE
1- 4' WALK GATE

\$ 3465.00

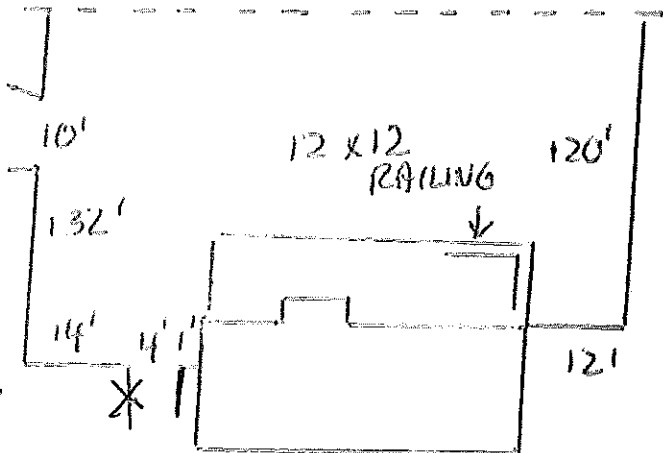
SAME IN 4-RAIL \$ 3760.00

4-RAIL CROSSBUCK \$ 4140.00

PORCHASE 3-RAIL \$ 2350.62

4RAIL CROSSBUCK \$ 2653.86

12' X 12' PORCH RAILING \$ 1095.00



6-7 WEEKS LEAD TIME

Terms: All accounts past due are subject to a service charge of 2% per month or 24% annum on invoices that are unpaid and over 10 days old. Should action be brought to collect any sums past due, Eads Fence Company shall be entitled to recover collection costs, court costs and attorney's fees. Invoices not paid in full void any and all warranties and all materials remain the property of Eads Fence Company until invoices are paid in full.

Conditions: Installations and workmanship will be consistent with the generally recognized standards in the industry. Eads Fence Company shall not be responsible for damage or delays due to strikes, fires, accidents, weather, seasonal business conditions, soil conditions, late shipment of materials or other causes beyond our reasonable control. However, all efforts will be made to complete work on time. Eads Fence Company is not responsible for compensation to the customer for any consequential damages including but not limited to time lost from work. This agreement, when accepted by the purchaser named above, shall become a contract under the laws of the state in which the job is located and shall be so construed. All changes or alterations in measurements or materials will be treated as an entirely new contract. If installation is suspended at the purchaser's request, the ensuing expense for time and travel and/or the installer to complete the job is to be paid by purchaser. There are no warranties expressed or implied including the warranty of merchantability on the materials used in the construction of the above proposal except those warranties extended by the manufacturer. The removal of rocks larger than holes being dug, tree roots, buried foundations, debris, shale and other obstructions, will be added to the contract price as an additional cost to the purchaser. 15% Restocking fee on cancelled jobs / orders. No refund of non-stock materials. Eads Fence Company sign must be on your completed fence or any and all warranties are voided. QUOTE VALID FOR 30 DAYS, unless otherwise stated.

DEPOSIT		BALANCE	TOTAL
Amount	<u>2280.00</u>	Amount	
Received	<u> </u> / <u> </u> / 20	Due day of Completion	

Acceptance of Proposal— The above prices, specifications, and conditions are satisfactory and are hereby accepted. You are authorized to do work as specified.

Signature [Signature]

Date of Acceptance 08/14/2017

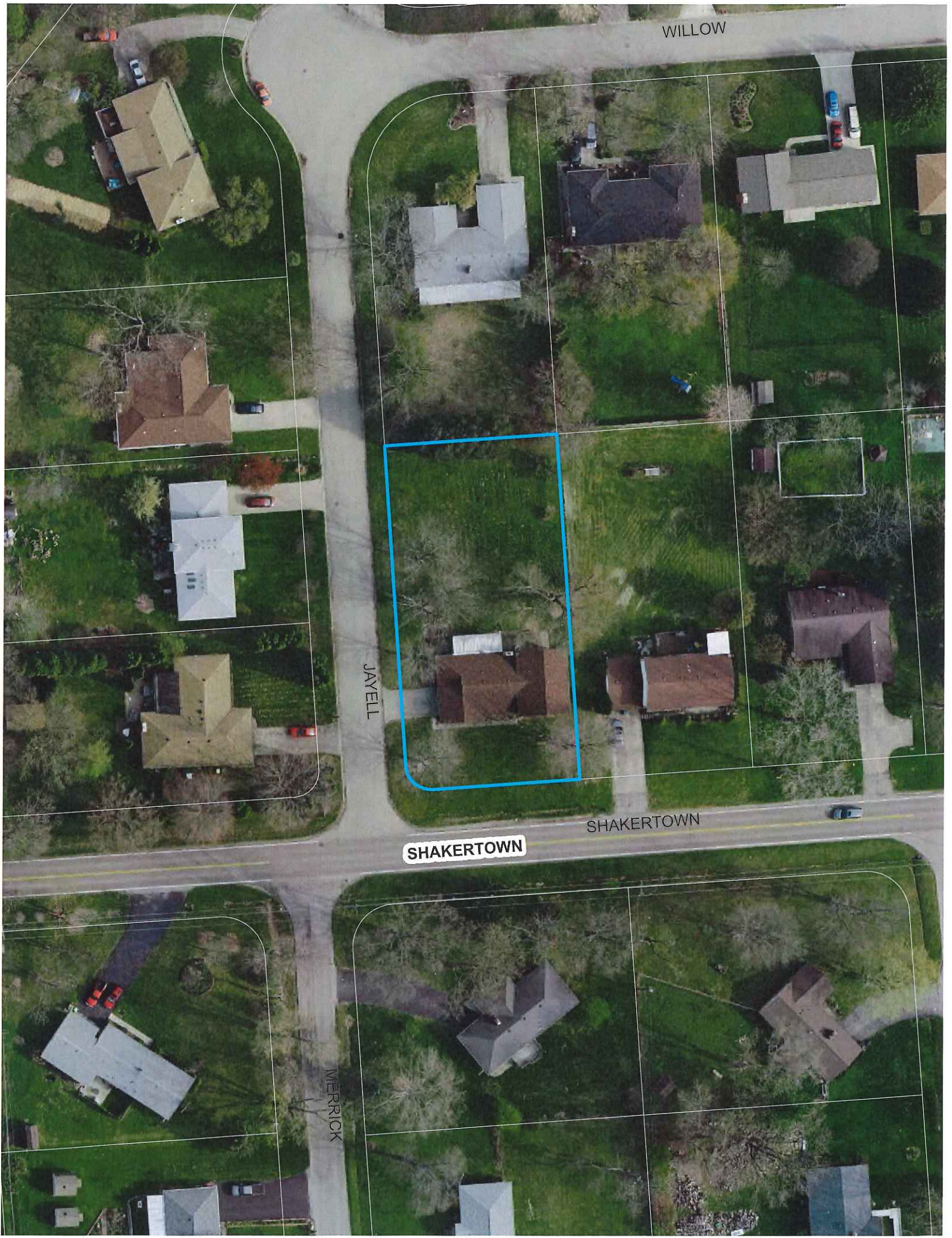
EADS Fence Company

By Terry Schaffner

937-474-1940







WILLOW

JAYELL

SHAKERTOWN

MERRICK

JAYELL

12.0'

